

*Answer
in Rittler contention
filed*

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July 19, 1955.

SEP 22 1998

CONCORD, N.H.

To His Excellency, the Governor
and the Honorable Council

Gentlemen:

You have inquired whether at the present stage of proceedings in connection with the construction of the auditorium-gymnasium at the Plymouth State Teachers College it is legally possible for the Governor and Council to disapprove the present selected location for construction and to designate a different location.

In my opinion this question must be answered in the affirmative, having due regard, however, to the equities and difficulties unavoidably involved by virtue of the present advanced state of acquisition and negotiation for the purchase of the land and construction of this auditorium-gymnasium.

Revised Laws, chapter 14, section 5, authorizes the Governor and Council to purchase institutional lands by eminent domain upon request of the State Board of Education as trustee of the Teachers College, and Revised Laws, chapter 27, sections 23 - 34 makes additional provision for the acquisition and disposal of real estate by the Governor and Council. The proceedings leading to the acquisition of the present location in Plymouth from Mrs. Rittler were taken under the latter sections and this proceeding resulted in an award to Mrs. Rittler of \$40,715, which has been paid.

Real estate acquired under the provisions of chapter 27 by section 33 must be "held by the state for the purposes for which it was acquired, until otherwise ordered by the legislature."

The contract which is currently before the Governor and Council for approval comes to you under the provisions of Laws 1953, chapter 460. Subsection II of section 1 of this chapter provides that within thirty days from the date of opening bids, the Commissioner of Public Works and Highways shall prepare a contract of acceptance with the lowest bidder (lowest responsible bidder) and that after approval by the Attorney General as to form and the Comptroller as to availability of funds, the contract shall be submitted to the Governor and Council for approval and upon approval shall become a valid contract of the state. The question of disapproval of a contract in such an advanced stage of execution does not involve the power to act arbitrarily or capriciously or to otherwise disregard the proceedings which previously led to the substantial work on the part of the Commissioner of Public Works and Highways and the bidder in preparing their estimates.

No precise formula is set forth in defining the reasons for which the approval of the Governor and Council may be lawfully withheld. However, it is clear that under the provisions of Revised Laws, chapter 27, section 17, the expenditure of any monies appropriated or otherwise provided to carry on the work of any department of the state government are subject to the approval of the Governor and Council for the purpose of securing the prudent and economical expenditure of the monies appropriated. Thus, should it be the opinion of the Governor and Council that the expenditure involved was imprudent and uneconomical, the power does exist to withhold approval but before doing this it is desired to emphasize the fact that the Plymouth Teachers College appropriation (Capital Budget Act, Laws 1953, chapter 264, section 2, IX) contained a legislative estimate of cost for this auditorium-gymnasium in the amount of \$337,500, which indicates that the Legislature clearly contemplated that the expenditure of a sum not to exceed this amount would be required for this purpose.

It has been impossible in the brief time available to me to review in detail the proceedings before the Governor and Council at previous sessions respecting this property or the steps taken by the Commissioner of Public Works and Highways in negotiating toward the contract with Mr. Titus which is presently before the Governor and Council. However, it is clear that if the Governor and Council should now see fit to reject the location which has already been acquired by the state, the law requires the land to continue to be held for the purposes for which it was acquired until the Legislature directs otherwise. Bids submitted by Mr. Titus for construction on the present location would be unworkable for another and different location. Therefore, withholding of Governor and Council approval of the contract at the present time for reason of variance in location would for all intents and purposes constitute a rejection of this bid.

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In addition, there is no guarantee that the Rittler property could be disposed of at public auction at a price equal to that paid by the state should a public auction be held, although it is possible that a price might be received in excess of the price paid.

However, your attention is respectfully invited to the fact that the previous Governor and Council specifically chose this location and voted that it be taken for this purpose and directed my office to proceed to accomplish the taking under the law above cited. This was done and this property was taken from Mrs. Rittler at a time when it was not for sale to any person. It was a compulsory taking. Re-examination of the file indicates that the proceedings were in no respect prejudicial to the state nor to Mrs. Rittler.

The matter has been completed, the property acquired, and, while I respectfully advise that in my opinion you have the technical power to withhold approval of this location, such a decision would most certainly result in further difficulties and substantial expense to the state which might or might not more than offset any savings to the state in land acquisition cost, in turn depending upon the price to be received by the state from an eventual sale of this property at public auction should the Legislature so direct.

Respectfully submitted,

Louis C. Wyman
Attorney General

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